



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.  
Secretary of Natural Resources

SOUTH CENTRAL REGIONAL OFFICE  
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Robert G. Burnley  
Director

Thomas L. Henderson  
Regional Director

### **STATE WATER CONTROL BOARD ENFORCEMENT ACTION**

#### **A SPECIAL ORDER BY CONSENT**

#### **ISSUED TO**

**The Town of South Boston  
Permit Number VA0020362**

#### **SECTION A: Purpose**

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1185 and 62.1-44.15(8a) and (8d), between the State Water Control Board and the Town of South Boston for the purpose of resolving certain violations of State Water Control Law and regulations.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizen board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.

5. “Order” means this document, also known as a Consent Special Order.
6. “Town or South Boston” means the Town of South Boston located in Halifax County, Virginia.
7. “Facility” means the wastewater treatment plant and related appurtenances owned and operated by the Town of South Boston.
8. “SCRO” means the South Central Regional Office of the DEQ, located in Lynchburg, Virginia.
9. “VPDES” means the Virginia Pollution Discharge Elimination System.
10. “Permit” means VPDES Permit number VA0020362 issued to South Boston on June 6, 1999, and expires on June 6, 2004.

**SECTION C: Findings of Facts and Conclusions of Law**

1. The Town owns and operates the Facility located in South Boston, Virginia. The Facility is the subject to the Permit, which allows the Town to discharge treated wastewater into the Dan River of the Roanoke River Basin in strict compliance with the terms, limitations, and requirements delineated in the Permit.
2. Based on Department records the DEQ issued Notice of Violations (“NOV”) numbers W2003-06-L-0003 on June 10, 2003, W2003-07-L-0007 on July 18, 2003, W2003-09-L-0009 on September 25, 2003, and W2003-11-L-0003 on November 14, 2003, and Warning Letter, number W2003-05-L-1002, on May 9, 2003, for the following violations:
  - a. Exceedances of Total Suspended Solids (“TSS”) effluent limits for the months of March, April, May, June, August, and September 2003; and
  - b. Exceedances of Biochemical Oxygen Demand (“BOD”) effluent limits for the months of March, April, June, and August 2003; and
  - c. Exceedance of Chlorine Technical Minimum effluent limit in June, July, August, and September 2003; and
  - d. Exceedances of Total Chlorine Contact limit in March and September 2003; and
  - e. Violation of pH minimum effluent limits in September 2003; and

- f. Violation of Dissolved Oxygen (“DO”) minimum effluent limit in May 2003; and
  - g. The Facility also exceeded the Chlorine Technical Minimum effluent limit in October 2003.
3. The Town attributes the effluent limits violations to flooding of the Dan River, and inflow and infiltration (“I & I”) within the Facility’s sewage conveyance system. During flood events at least two of the system’s manhole covers were dislodged and submerged allowing the Dan River to flow into the sewage conveyance system. In addition, because of the excessive I & I aeration basin diffusers were turned off to minimize biomass loss during high flow events; the diffusers became fouled from not operating. South Boston attributes the effluent limits violations of August and September to the fouling of the diffusers.
4. On June 12, 2003, the DEQ received notice, pursuant to part I D 1 of the Permit, from the Town that the Facility had exceeded the 95 percent design flow capacity for three consecutive months, i.e., February, March, and April 2003. The Town attributes excessive flows during those months to flooding of the Dan River and to I & I in its sewage conveyance system.
5. On July 21, 2003, the DEQ and South Boston, along with the Town’s consultant, met to discuss the issues related to permit compliance.
6. On August 18, 2003, the DEQ received a Compliance Action Plan (“CAP”) from South Boston dated August 12, 2003. The CAP outlines current and future activities, as well as financial funding sources, for addressing I & I in the Facility’s sewage conveyance system. South Boston believes that completion of the CAP will result in monthly average flows to the Facility being lowered to a point that is consistently below 95 percent of design flow capacity.

#### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted in Va. Code § 62.1-44.15(8a) and (8d), orders South Boston, and South Boston consents, to perform the actions contained in Appendix A of this Order. Further, the Board orders, and South Boston

consents, to pay a civil charge of \$6,200.00 within 30 days of the issuance of this Order.

The payment shall note that it is being made pursuant to this Order, and shall note the Federal Identification number for South Boston. The payment shall be made by check, certified check, money order, or cashier's check made payable to the "Treasurer of Virginia" and sent to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of South Boston, for good cause shown by South Boston, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations that occur after this Order is issued; (2) seeking subsequent remediation of the Facility as may be authorized by law; or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect enforcement actions by other state, local, or federal regulatory authorities, whether or not arising out of the same or similar facts.
3. For purposes of this Order and subsequent actions with respect to this Order, South Boston admits to the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. South Boston consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. South Boston declares it has received fair and due process under the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, and the State Water Control Law, and waives the right to any hearing or other

administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

6. Failure by South Boston to comply with any of the terms of this Order shall constitute a violation of an Order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. South Boston shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or other occurrence. South Boston shall demonstrate that such circumstances resulting in noncompliance were beyond the control of South Boston and not due to a lack of good faith or diligence on its part. South Boston shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within five (5) business days of learning of any condition listed above, which South Boston intends to assert will result in the impossibility of compliance, shall constitute a

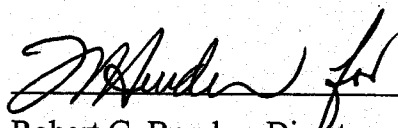
waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns jointly and severally.
10. This Order shall become effective upon execution by the Director, or his designee, and South Boston.
11. This Order shall continue in effect until:
  - a. South Boston petitions the Regional Director to terminate the Order after it has completed all requirements of the Order, and the Regional Director determines that all requirements of the Order have been satisfactorily completed; or
  - b. The Director, his designee, or the Board may terminate this Order in his or its sole discretion upon 30 days written notice to South Boston.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve South Boston from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By his signature below, South Boston consents to the issuance of this Order.

And it is so ORDERED this 17<sup>th</sup> day of June, 2004.

  
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Robert G. Burnley, Director  
Department of Environmental Quality

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South Boston consents to the issuance of this Order.

Date: 03-09-04 By: Terry A. Daniel  
Terry A. Daniel, Town Manager, Town of South Boston

Commonwealth of Virginia

City/County of Halifax

The foregoing document was signed and acknowledged before me this 9 day

of March, 2004, by Terry A. Daniel, Town Manager, on behalf of the  
Town of South Boston.

**RECEIVED**

MAR 11 2004

**DEQ SCRO**

Jane P. Jones  
Notary Public

My commission expires: 2/28/05

(The remainder of this page is intentionally left blank.)

## **Appendix A**

### **The Town of South Boston shall:**

1. Within six (6) months of the issuance of this Order, secure all manholes located within the twenty-five (25) year flood plain of the Dan River and its tributaries with locking covers or a functional equivalent.
2. By August 30, 2004, complete construction of the 2003 Sewer Rehabilitation Project described in the CAP, which is hereby incorporated by reference.
3. By April 30, 2005, complete construction of the Route 58 / Route 501 Sewer Improvements Project described in the CAP, which is hereby incorporated by reference.
4. Unless otherwise specified in the Order, or the Permit, all correspondence related to this Order shall be sent to:

Harry F. Waggoner  
Virginia Department of Environmental Quality  
South Central Regional Office  
7705 Timberlake Road  
Lynchburg, Virginia 24502